

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES METCALF,

Plaintiff,

v.

JERRY BRADY, DEPUTY PETRIE
and DEPUTY MASON,

Defendants.

NO. CV-07-287-EFS

**ORDER DENYING AS MOOT PLAINTIFF'S
DISCOVERY REQUEST AND DENYING
PLAINTIFF'S REQUEST FOR DEFAULT
JUDGMENT**

**ORDER SETTING FORTH REQUIREMENT
FOR TELEPHONIC HEARING**

Before the Court, without oral argument, are Plaintiff James C. Metcalf's Discovery Request (Ct. Rec. 17) and Request for Judgement [sic] by Default (Ct. Rec. 22). Following the filing of his discovery request, Plaintiff filed a Notice of Withdrawal of the request (Ct. Rec. 19); accordingly, the Court denies as moot Plaintiff's Discovery Request. Because Defendants Jerry Brady, Deputy Petrie, and Deputy Mason filed an Answer (Ct. Rec. 20) on the same date Plaintiff filed his default judgment request, the Court denies Plaintiff's request.¹ See

Plaintiff sought a "default judgment"; however, before default judgment is entered, "default" must be entered. FED. R. CIV. P. 55; 46 Am Jur. 2d Judgments § 233 (2007).

1 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986) (noting that the
2 Federal Rules of Civil Procedure favor deciding matters on their
3 merits).

4 According, **IT IS ORDERED:**

5 1. Plaintiff's Discovery Request (**Ct. Rec. 17**) is **DENIED AS MOOT.**

6 2. Plaintiff's Request for Judgment by Default (**Ct. Rec. 22**) is
7 **DENIED.**

8 3. Defense counsel shall make arrangements with the Correctional
9 Center where Plaintiff is housed to ensure he is able to call in for the
10 March 3, 2008, Scheduling Conference at 9:00 a.m. on a telephone that
11 permits him to have ready access to his legal papers. Plaintiff and
12 counsel are to call the Court's public conference line, 509-376-8880;
13 the use of cell phones is prohibited.

14 **IT IS SO ORDERED.** The District Court Executive is directed to
15 enter this Order and forward a copy to Plaintiff and counsel.

16 **DATED** this 30th day of January 2008.

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18 S/ Edward F. Shea
19 EDWARD F. SHEA
20 UNITED STATES DISTRICT JUDGE

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